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**ENDORSED
FILED
ALAMEDA COUNTY**

JUL 23 2018

CLERK OF THE SUPERIOR COURT
By Jhalisa Castaneda
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,

Plaintiff,

v.

DEL TACO RESTAURANTS, INC., et al.,

Defendants.

Case No. RG-16-834949

**[PROPOSED] CONSENT
JUDGMENT AS TO POS SUPPLY
SOLUTIONS, INC.**

1 **1. INTRODUCTION**

2 The Parties to this Consent Judgment are the Center for Environmental Health, a
3 California non-profit corporation (“CEH”), and POS Supply Solutions, Inc., a Massachusetts
4 corporation (“Settling Defendant”). The Parties enter into this Consent Judgment to settle certain
5 claims asserted by CEH against Settling Defendant as set forth in the operative complaint
6 (“Complaint”) in the above-captioned matter. This Consent Judgment covers thermal paper sold
7 by Settling Defendant (“Thermal Paper”) that contains bisphenol A, a chemical known to the
8 State of California to cause birth defects or other reproductive harm (“BPA”). Thermal Paper is
9 used in thermal printers to create transactional documents such as point of sale, credit card and
10 ATM receipts.

11 1.1 On March 20, 2017, CEH provided a 60-day Notice of Violation under Proposition
12 65 to Settling Defendant, the California Attorney General, the District Attorneys of every county
13 in California and the City Attorneys of every California city with a population greater than
14 750,000, alleging that Settling Defendant violated California Health & Safety Code Section
15 25249.5 *et seq.* (“Proposition 65”) by exposing persons to BPA from Thermal Paper without first
16 providing a clear and reasonable Proposition 65 warning.

17 1.2 Settling Defendant is a person in the course of doing business under Proposition
18 65.

19 1.3 On October 13, 2016, CEH filed the Complaint in the above-captioned matter. On
20 November 2, 2016, CEH filed the First Amended Complaint in the above-captioned matter. On
21 June 26, 2017, CEH amended the operative Complaint in the above-captioned matter to name
22 Settling Defendant as a defendant.

23 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court
24 has jurisdiction over the allegations of violations contained in the Complaint and personal
25 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in
26 the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
27 Judgment as a full and final resolution of all claims which were or could have been raised in the
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1 Complaint based on the facts alleged therein with respect to Thermal Paper containing BPA sold
2 by Settling Defendant.

3 1.5 Nothing in this Consent Judgment is or shall be construed as an admission by the
4 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
5 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
6 conclusion of law, issue of law or violation of law. Nothing in this Consent Judgment shall
7 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
8 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
9 and compromise and is accepted by the Parties solely for purposes of settling, compromising and
10 resolving issues disputed in this Action.

11 **2. INJUNCTIVE RELIEF**

12 2.1 **Definitions.**

13 2.1.1 The “Effective Date” is the date of entry of this Consent Judgment.

14 2.1.2 “California Thermal Paper” is Thermal Paper that will be used in
15 California or otherwise provided to employees working in California or consumers located in
16 California by Settling Defendant or any direct or indirect downstream entity.

17 2.2 **Specification Compliance Date.** To the extent it has not already done so, no
18 more than thirty (30) days after the Effective Date, Settling Defendant shall instruct each supplier
19 of California Thermal Paper that the California Thermal Paper supplied to Settling Defendant
20 must be BPA free. If in the future Settling Defendant purchases California Thermal Paper from a
21 supplier that it has not previously provided with instructions to provide BPA free Thermal Paper,
22 Settling Defendant shall provide such instructions to said supplier prior to placing an initial order
23 for California Thermal Paper. Settling Defendant shall retain and make available to CEH upon
24 reasonable written request records of communications sent to and received from Thermal Paper
25 Suppliers that are related to the requirement of this Section 2.2 for a period of five (5) years from
26 the Effective Date.

1 **2.3 Reformulation of Thermal Paper.** After the Effective Date, Settling Defendant
2 shall not purchase, ship, sell or offer for sale any California Thermal Paper that contains BPA that
3 was intentionally added to the Thermal Paper in the manufacturing process. Thermal Paper that
4 contains fewer than twenty (20) parts per million BPA by weight (the “Reformulation Level”) is
5 deemed to contain no intentionally added BPA, such concentration to be determined by use of a
6 test performed by an accredited laboratory using inductively coupled plasma mass spectrometry
7 (ICP-MS) equipment following solvent extraction and analysis with high performance liquid
8 chromatography.

9 **2.4 Additional Efforts to Reduce Use of Thermal Paper.** Most of the alternatives to
10 BPA used in Thermal Paper are other phenols that also have potentially adverse health effects.
11 Settling Defendant further agrees to continue to use best efforts to reduce the use of all Thermal
12 Paper that contains toxic chemicals. These efforts shall include but not be limited to efforts to
13 sell Thermal Paper that is phenol free. Settling Defendant shall prepare a written report detailing
14 the efforts made and results from this work on the reduction in use of Thermal Paper containing
15 toxic chemicals that shall be submitted to CEH one year after the Effective Date.

16 **3. ENFORCEMENT**

17 **3.1 Enforcement Procedures.** Prior to bringing any motion or order to show cause to
18 enforce the terms of this Consent Judgment, a Party seeking to enforce this Consent Judgment
19 shall provide the violating party thirty (30) days advanced written notice of the alleged violation.
20 The Parties shall meet and confer during such thirty (30) day period in an effort to try to reach
21 agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the
22 Party seeking to enforce may, by new action, motion, or order to show cause before the Superior
23 Court of Alameda, seek to enforce Proposition 65 or the terms and conditions contained in this
24 Consent Judgment.

25 **4. PAYMENTS**

26 **4.1 Payments by Settling Defendant.** Settling Defendant shall pay the total sum of
27 \$53,000 as a settlement payment (“Settlement Payment”) as further set forth in this Section
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1 according to the following schedule: (a) \$26,500 on or before May 11, 2018; and (b) \$26,500 on
2 or before August 9, 2018.

3 **4.2 Allocation of Payments.** Each Settlement Payment of \$26,500 shall be paid in
4 five (5) separate checks in the amounts specified below and delivered as set forth below. Any
5 failure by Settling Defendant to comply with the payment terms herein shall be subject to a
6 stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each day the full
7 payment is not received after the applicable payment due date set forth in Section 4.1. The late
8 fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in
9 an enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The
10 Settlement Payment paid by Settling Defendant shall be allocated as set forth below between the
11 following categories and made payable as follows:

12 4.2.1 Settling Defendant shall pay a total of \$7,000 as a civil penalty ("Civil
13 Penalty") pursuant to Health & Safety Code §25249.7(b) in two separate checks of \$3,500 each.
14 The Civil Penalty payment shall be apportioned in accordance with Health & Safety Code
15 §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
16 Hazard Assessment ("OEHHA")). Accordingly, Settling Defendant shall pay the OEHHA
17 portion of the total Civil Penalty payment of \$5,250 by two separate checks in the amount of
18 \$2,625 each made payable to OEHHA and associated with taxpayer identification number 68-
19 0284486. This payment shall be delivered as follows:

20 For United States Postal Service Delivery:
21 Attn: Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
 P.O. Box 4010, MS #19B
 Sacramento, CA 95812-4010

24 For Non-United States Postal Service Delivery:
25 Attn: Mike Gyurics
26 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
 1001 I Street, MS #19B
 Sacramento, CA 95814

27 Settling Defendant shall pay the CEH portion of the total Civil Penalty payment of \$1,750 by two
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1 separate checks in the amount of \$875 each made payable to the Center for Environmental Health
2 and associated with taxpayer identification number 94-3251981. This payment shall be delivered
3 to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4 4.2.2 Settling Defendant shall pay a total of \$5,200 as an Additional Settlement
5 Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code
6 of Regulations, Title 11, § 3204 in two separate checks of \$2,600 each. CEH intends to place
7 these funds in CEH’s Toxics in Food Fund and use them to support CEH programs and activities
8 that seek to educate the public about BPA and other toxic chemicals in food, to work with the
9 food industry and agriculture interests to reduce exposure to BPA and other toxic chemicals in
10 food, and to thereby reduce the public health impacts and risks of exposure to BPA and other
11 toxic chemicals in food sold in California. CEH shall obtain and maintain adequate records to
12 document that ASPs are spent on these activities and CEH agrees to provide such documentation
13 to the Attorney General within thirty days of any request from the Attorney General. The
14 payments pursuant to this Section shall be made payable to the Center for Environmental Health
15 and associated with taxpayer identification number 94-3251981. These payments shall be
16 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

17 4.2.3 Settling Defendant shall pay a total of \$40,800 as a reimbursement of a
18 portion of CEH’s reasonable attorneys’ fees and costs in two separate payments of \$20,400 each.
19 Each of the attorneys’ fees and cost reimbursement payments shall be made in two separate
20 checks as follows: (a) \$17,300 payable to the Lexington Law Group and associated with taxpayer
21 identification number 94-3317175; and (b) \$3,100 payable to the Center For Environmental
22 Health and associated with taxpayer identification number 94-3251981. All of these payments
23 shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

24 4.2.4 To summarize, Settling Defendant shall deliver checks made out to the
25 payees and in the amounts set forth below:
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First Set of Payments Due May 11, 2018			
Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$2,625	OEHHA per Section 4.2.1
Center For Environmental Health	Penalty	\$875	CEH
Center For Environmental Health	ASP	\$2,600	CEH
Lexington Law Group	Fee	\$17,300	LLG
Center For Environmental Health	Fee	\$3,100	CEH
Second Set of Payments Due August 9, 2018			
Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$2,625	OEHHA per Section 4.2.1
Center For Environmental Health	Penalty	\$875	CEH
Center For Environmental Health	ASP	\$2,600	CEH
Lexington Law Group	Fee	\$17,300	LLG
Center For Environmental Health	Fee	\$3,100	CEH

5. MODIFICATION OF CONSENT JUDGMENT

5.1 **Modification.** This Consent Judgment may be modified from time to time by express written agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion and in accordance with law.

5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

6. CLAIMS COVERED AND RELEASE

6.1 Provided that Settling Defendant complies in full with its obligations under Section 4 hereof, this Consent Judgment is a full, final and binding resolution between CEH on behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents,

1 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which
2 Settling Defendant directly or indirectly distributes or sells Thermal Paper, including but not
3 limited to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees
4 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn
5 about alleged exposure to BPA contained in Thermal Paper that was sold by Settling Defendant
6 prior to the Effective Date.

7 6.2 Provided that Settling Defendant complies in full with its obligations under
8 Section 4 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever
9 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
10 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
11 common law claims that have been or could have been asserted by CEH individually or in the
12 public interest regarding the failure to warn about exposure to BPA arising in connection with
13 Thermal Paper sold by Settling Defendant prior to the Effective Date.

14 6.3 Provided that Settling Defendant complies in full with its obligations under
15 Section 4 hereof, compliance with the terms of this Consent Judgment by Settling Defendant shall
16 constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees and its
17 Downstream Defendant Releasees with respect to any failure to warn about alleged exposure to
18 BPA contained in Thermal Paper that was sold by Settling Defendant after the Effective Date.

19 **7. PROVISION OF NOTICE**

20 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the
21 notice shall be sent by first class and electronic mail to:

22 Eric S. Somers
23 Lexington Law Group
24 503 Divisadero Street
25 San Francisco, CA 94117
26 esomers@lexlawgroup.com

27 7.2 When Settling Defendant is entitled to receive any notice under this Consent
28 Judgment, the notice shall be sent by first class and electronic mail to:

 Monica Baumann
 Scali Rasmussen

1 980 9th Street
2 16th Floor
3 Sacramento, CA 95814
4 mbaumann@scalilaw.com

5 Any Party may modify the person and address to whom the notice is to be sent by sending the
6 other Party written notice by first class and electronic mail.

7 **8. COURT APPROVAL**

8 8.1 This Consent Judgment shall become effective as a contract upon the date signed
9 by CEH and Settling Defendant, whichever is later, provided however, that CEH shall also
10 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall
11 support approval of such Motion.

12 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
13 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
14 purpose.

15 **9. GOVERNING LAW AND CONSTRUCTION**

16 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
17 California.

18 **10. ATTORNEYS' FEES**

19 10.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
20 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
21 unless the unsuccessful Party has acted with substantial justification. For purposes of this
22 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
23 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

24 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
25 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of
26 Civil Procedure § 1021.5 against a Party that acted with substantial justification. The Party
27 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this
28 provision shall not be construed as altering any procedural or substantive requirements for
obtaining such an award.

1 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of
2 sanctions pursuant to law.

3 **11. ENTIRE AGREEMENT**

4 11.1 This Consent Judgment contains the sole and entire agreement and understanding
5 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
6 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
7 and therein. There are no warranties, representations, or other agreements between the Parties
8 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
9 other than those specifically referred to in this Consent Judgment have been made by any Party
10 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
11 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
12 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
13 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
14 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
15 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
16 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
17 whether or not similar, nor shall such waiver constitute a continuing waiver.

18 **12. RETENTION OF JURISDICTION**

19 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
20 Consent Judgment.

21 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

22 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
23 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
24 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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1 **14. NO EFFECT ON OTHER SETTLEMENTS**

2 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
3 against an entity that is not Settling Defendant on terms that are different than those contained in
4 this Consent Judgment.

5 **15. EXECUTION IN COUNTERPARTS**

6 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
7 means of facsimile or portable document format (pdf), which taken together shall be deemed to
8 constitute one document.

9 **IT IS SO STIPULATED:**

10 **CENTER FOR ENVIRONMENTAL**
11 **HEALTH**

12 

13 _____
14 Charlie Pizarro
15 Associate Director

16 **POS SUPPLY SOLUTIONS, INC.**

17 _____
18 Signature

19 _____
20 Printed Name

21 _____
22 Title

23 **IT IS SO ORDERED:**

24
25 Dated: _____, 2018

26 _____
27 Judge of the Superior Court of California

28

1 14. NO EFFECT ON OTHER SETTLEMENTS

2 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
3 against an entity that is not Settling Defendant on terms that are different than those contained in
4 this Consent Judgment.

5 15. EXECUTION IN COUNTERPARTS

6 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
7 means of facsimile or portable document format (pdf), which taken together shall be deemed to
8 constitute one document.

9 IT IS SO STIPULATED:

10 CENTER FOR ENVIRONMENTAL
11 HEALTH

12
13
14 _____
Charlie Pizarro
Associate Director

15
16 POS SUPPLY SOLUTIONS, INC.

17
18 
19 _____
Signature

20 Stephen Entfield
21 _____
Printed Name

22 President / CEO
23 _____
Title

24 IT IS SO ORDERED:

25
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27 Dated: 7/23 2018

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Judge of the Superior Court of California